

House File 268 - Introduced

HOUSE FILE 268

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SALMON

A BILL FOR

1 An Act relating to the requirements for authorized electronic
2 monitoring in nursing facilities, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 135C.1, Code 2021, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 6A. "*Electronic monitoring*" means the
4 placement and use of an electronic monitoring device by
5 a resident in the resident's room in accordance with this
6 subchapter.

7 NEW SUBSECTION. 6B. "*Electronic monitoring device*" means a
8 camera or other device that captures, records, or broadcasts
9 audio, video, or both, that is placed in a resident's room and
10 is used to monitor the resident or activities in the room.

11 NEW SUBSECTION. 21A. "*Resident representative*" means one of
12 the following in the order of priority listed, to the extent
13 the person may reasonably be identified and located:

14 a. The attorney in fact designated to make treatment
15 decisions for the resident in accordance with chapter 144B.

16 b. The guardian of the resident if one has been appointed
17 pursuant to chapter 633.

18 c. The resident's spouse.

19 d. An adult child of the resident or, if the resident has
20 more than one adult child, a majority of the adult children who
21 are reasonably available.

22 e. A parent of the resident, or parents if both are
23 reasonably available.

24 f. An adult sibling of the resident.

25 Sec. 2. NEW SECTION. 135C.49 **Electronic monitoring.**

26 1. A resident or a resident representative may conduct
27 electronic monitoring of the resident's room through the use of
28 an electronic monitoring device placed in the resident's room
29 pursuant to this subchapter.

30 2. Nothing in this section precludes the use of electronic
31 monitoring otherwise allowed by law.

32 Sec. 3. NEW SECTION. 135C.50 **Consent to electronic**
33 **monitoring.**

34 1. Except as otherwise provided in this subchapter,
35 a resident must consent to electronic monitoring in the

1 resident's room in writing on a notification and consent
2 form prescribed by the department. If the resident has
3 not affirmatively objected to electronic monitoring and the
4 resident's medical professional determines that the resident
5 lacks the ability to understand and appreciate the nature
6 and consequences of electronic monitoring, the resident
7 representative may consent on behalf of the resident. For
8 purposes of this subsection, a resident affirmatively objects
9 when the resident orally, visually, or through the use of
10 auxiliary aids or services declines electronic monitoring. The
11 resident's response shall be documented on the notification and
12 consent form.

13 2. Prior to a resident representative consenting on behalf
14 of a resident, the resident shall be asked if the resident
15 wants electronic monitoring to be conducted. The resident
16 representative shall explain all of the following to the
17 resident:

18 a. The type of electronic monitoring device to be used.

19 b. The standard conditions or restrictions that may be
20 placed on the electronic monitoring device's use including as
21 specified in the list of standard conditions or restrictions
22 contained in the notification and consent form completed by the
23 resident as provided in section 135C.53.

24 c. The dissemination and use of any recording as provided
25 under section 135C.57 or 135C.58.

26 d. The resident's ability to decline all recordings.

27 3. A resident, or resident representative when consenting
28 on behalf of the resident, may consent to electronic monitoring
29 with any conditions or restrictions of the resident's or
30 resident representative's choosing, including the list
31 of standard conditions or restrictions contained in the
32 notification and consent form completed by the resident
33 as provided in section 135C.53. A resident, or resident
34 representative when consenting on behalf of the resident, may
35 request that the electronic monitoring device be turned off

1 or the visual or audio recording component of the electronic
2 monitoring device be blocked at any time.

3 4. Prior to implementing electronic monitoring, a resident,
4 or resident representative when acting on behalf of the
5 resident, shall obtain the written consent on the notification
6 and consent form of any other resident who is a roommate
7 residing in the shared room. A roommate's or roommate's
8 resident representative's written consent shall comply with
9 the requirements of this section. Consent by a roommate or
10 a roommate's resident representative under this subsection
11 authorizes the resident's use of any recording obtained under
12 this section as provided under sections 135C.57 and 135C.58.

13 5. Any resident conducting electronic monitoring shall
14 immediately remove or disable an electronic monitoring device
15 prior to a new resident who will be a roommate moving into
16 a shared room, unless the resident conducting electronic
17 monitoring obtains the new roommate's or new roommate's
18 resident representative's written consent as provided under
19 this section prior to the new roommate moving into the shared
20 room. Upon obtaining the new roommate's or new roommate's
21 resident representative's signed notification and consent form
22 and submitting the form to the nursing facility as required
23 under section 135C.52, the resident may resume electronic
24 monitoring.

25 6. The resident or roommate, or the resident representative
26 or roommate's resident representative if the representative is
27 consenting on behalf of the resident or roommate, may withdraw
28 consent at any time and the withdrawal of consent shall be
29 documented on the original consent form as provided under
30 section 135C.52.

31 Sec. 4. NEW SECTION. 135C.51 Refusal of roommate to
32 consent.

33 If a resident of a nursing facility who is residing in a
34 shared room, or the resident representative of such a resident
35 when acting on behalf of the resident, wants to conduct

1 electronic monitoring and another resident living in or moving
2 into the same shared room refuses to consent to the use of an
3 electronic monitoring device, the nursing facility shall make
4 a reasonable attempt to accommodate the resident who wants to
5 conduct electronic monitoring. A nursing facility has met
6 the requirement to make a reasonable attempt to accommodate
7 a resident or resident representative who wants to conduct
8 electronic monitoring when, upon notification that a roommate
9 has not consented to the use of an electronic monitoring device
10 in the resident's room, the nursing facility offers to move one
11 of the residents to another shared room that is available at
12 the time of the request that accommodates the resident. If
13 a resident chooses to reside in a private room in order to
14 accommodate the use of an electronic monitoring device, the
15 resident shall be subject to a private room rate. If a nursing
16 facility is unable to accommodate a resident due to lack of
17 space, the nursing facility shall reevaluate the request
18 periodically until the request is fulfilled.

19 **Sec. 5. NEW SECTION. 135C.52 Notice and consent form**
20 **submitted to nursing facility.**

21 1. Electronic monitoring may begin only after the resident
22 or resident representative who intends to place an electronic
23 monitoring device in the resident's room and any roommate or
24 roommate's resident representative completes a notification and
25 consent form and submits the form to the nursing facility.

26 2. Upon receipt of the required, completed notification and
27 consent form, the nursing facility shall place the original
28 form in the resident's file, and a copy of the form in any
29 roommate's file. The nursing facility shall provide a copy to
30 the resident and the resident's roommate, as applicable.

31 3. If a resident or roommate, or the resident representative
32 or roommate's resident representative if the representative
33 is consenting on behalf of the resident or roommate, chooses
34 to alter the conditions under which consent to electronic
35 monitoring is given or chooses to withdraw consent to

1 electronic monitoring, the nursing facility shall make
2 available the original notification and consent form so that
3 the original form may be updated. Upon receipt of the updated
4 original form, the nursing facility shall place the updated
5 original form in the resident's file. The nursing facility
6 shall provide a copy of the updated form to the resident and
7 the resident's roommate, as applicable.

8 4. If a new roommate, or the new roommate's resident
9 representative when consenting on behalf of the new roommate,
10 does not consent to electronic monitoring and submit a
11 completed notification and consent form to the nursing
12 facility, and the resident conducting the electronic monitoring
13 does not remove or disable an existing electronic monitoring
14 device, the nursing facility shall remove the electronic
15 monitoring device.

16 5. If a roommate, or the roommate's resident representative
17 when withdrawing consent on behalf of the roommate, submits
18 an updated notification and consent form withdrawing consent
19 and the resident conducting electronic monitoring does not
20 remove or disable the electronic monitoring device, the nursing
21 facility shall remove the electronic monitoring device.

22 Sec. 6. NEW SECTION. 135C.53 Notification and consent form
23 requirements.

24 1. The notification and consent form completed by the
25 resident shall include, at a minimum, all of the following
26 information:

27 a. The resident's signed consent to electronic monitoring or
28 the signature of the resident representative, if applicable.
29 If a resident representative signs the consent form, the form
30 shall document all of the following:

31 (1) The date the resident was asked if the resident wants
32 electronic monitoring to be conducted.

33 (2) Any person present when the resident was asked.

34 (3) An acknowledgment that the resident did not
35 affirmatively object.

1 (4) The source of authority allowing the resident
2 representative to sign the notification and consent form on the
3 resident's behalf.

4 *b.* The resident's roommate's signed consent or the signature
5 of the roommate's resident representative, if applicable. If a
6 roommate's resident representative signs the consent form, the
7 form shall document all of the following:

8 (1) The date the roommate was asked if the roommate wants
9 electronic monitoring to be conducted.

10 (2) Any person present when the roommate was asked.

11 (3) An acknowledgment that the roommate did not
12 affirmatively object.

13 (4) The source of authority allowing the resident
14 representative to sign the notification and consent form on the
15 roommate's behalf.

16 *c.* The type of electronic monitoring device to be used.

17 *d.* Any installation needs, such as mounting of a device to
18 a wall or ceiling.

19 *e.* The proposed date of installation for scheduling
20 purposes.

21 *f.* A copy of any contract for maintenance of the electronic
22 monitoring device by a commercial entity.

23 *g.* A list of standard conditions or restrictions that the
24 resident or a roommate may elect to place on the use of the
25 electronic monitoring device including but not limited to all
26 of the following:

27 (1) Prohibiting audio recording.

28 (2) Prohibiting video recording.

29 (3) Prohibiting broadcasting of audio or video.

30 (4) Turning off the electronic monitoring device or
31 blocking the visual recording component of the electronic
32 monitoring device for the duration of an exam or procedure by a
33 health care professional.

34 (5) Turning off the electronic monitoring device or
35 blocking the visual recording component of the electronic

1 monitoring device while dressing or bathing is performed.

2 (6) Turning off the electronic monitoring device for
3 the duration of a visit with a spiritual adviser, ombudsman,
4 attorney, financial planner, intimate partner, or other
5 visitor.

6 h. Any other condition or restriction elected by the
7 resident or roommate on the use of an electronic monitoring
8 device.

9 i. A statement of the circumstances under which a recording
10 may be disseminated under section 135C.57.

11 j. A signature box to document if the resident or roommate
12 withdraws consent.

13 2. A nursing facility shall make the notification and
14 consent form available to the residents and inform residents of
15 the option to conduct electronic monitoring of the resident's
16 room.

17 Sec. 7. NEW SECTION. 135C.54 Cost and installation.

18 1. A resident who chooses to conduct electronic monitoring
19 shall do so at the resident's own expense, including payment of
20 any purchase, installation, maintenance, and removal costs.

21 2. If a resident chooses to place an electronic monitoring
22 device that uses internet technology for visual or audio
23 monitoring, the resident may be responsible for contracting
24 with an internet service provider.

25 3. The nursing facility shall make a reasonable attempt
26 to accommodate the resident's installation needs, including
27 allowing access to the nursing facility's public-use internet
28 or wi-fi systems when available for other public uses.

29 4. All electronic monitoring device installations and
30 supporting services shall comply with the requirements of the
31 national fire protection association 101 life safety code.

32 5. A nursing facility shall not charge a resident a fee
33 for the costs of electricity used by the electronic monitoring
34 device.

35 Sec. 8. NEW SECTION. 135C.55 Notice to visitors.

1 1. A nursing facility shall post a sign at each nursing
2 facility entrance accessible to visitors that states
3 "Electronic monitoring devices may be present in the rooms of
4 residents to record persons and activities".

5 2. A nursing facility shall post a sign clearly and
6 conspicuously at the entrance to a resident's room where
7 electronic monitoring is being conducted. The notice shall
8 state "This room is electronically monitored".

9 3. The nursing facility is responsible for installing and
10 maintaining the signage required in this section.

11 Sec. 9. NEW SECTION. 135C.56 **Obstruction of electronic**
12 **monitoring devices.**

13 1. A person shall not knowingly hamper, obstruct, tamper
14 with, or destroy an electronic monitoring device placed in
15 a resident's room without the permission of the resident or
16 resident representative.

17 2. A person shall not knowingly hamper, obstruct, tamper
18 with, or destroy a video or audio recording obtained through
19 the use of an electronic monitoring device in accordance with
20 this subchapter.

21 3. It is not a violation of this section for a person to
22 turn off the electronic monitoring device or block the visual
23 recording component of the electronic monitoring device at the
24 direction of the resident or resident representative, or if
25 consent has been withdrawn.

26 4. A person who violates this section is guilty of a serious
27 misdemeanor.

28 Sec. 10. NEW SECTION. 135C.57 **Dissemination of recordings.**

29 1. A person shall not access any video or audio recording
30 created through electronic monitoring under this subchapter
31 without the written consent of the resident or resident
32 representative.

33 2. Except as otherwise required by law, a recording or copy
34 of a recording created as provided in this subchapter may only
35 be disseminated for the purpose of addressing health, safety,

1 or welfare concerns of a resident.

2 3. A person accessing or disseminating a recording or copy
3 of a recording created as provided in this section in violation
4 of this section is guilty of a serious misdemeanor.

5 Sec. 11. NEW SECTION. 135C.58 **Admissibility of evidence.**

6 Subject to applicable rules of evidence and procedure, any
7 video or audio recording created through electronic monitoring
8 under this subchapter may be admitted into evidence in a civil,
9 criminal, or administrative proceeding if the contents of the
10 recording have not been edited or artificially enhanced and the
11 recording includes the date and time the events occurred.

12 Sec. 12. NEW SECTION. 135C.59 **Liability — penalties.**

13 1. A nursing facility is not civilly or criminally liable
14 for the disclosure of a recording by a resident or a person who
15 consents on behalf of a resident for any purpose not authorized
16 by this subchapter.

17 2. A nursing facility is not civilly or criminally liable
18 for a violation of a resident's right to privacy arising out
19 of any electronic monitoring conducted in accordance and in
20 compliance with this subchapter.

21 3. A nursing facility that knowingly violates this
22 subchapter shall be subject to licensee discipline.

23 Sec. 13. NEW SECTION. 135C.60 **Resident protections.**

24 1. A nursing facility shall not do any of the following:

25 a. Refuse to admit a potential resident or remove a resident
26 because the nursing facility disagrees with the potential
27 resident's or the resident's decisions regarding electronic
28 monitoring, whether the decision is made by a resident or a
29 resident representative acting on behalf of the resident.

30 b. Retaliate or discriminate against any resident for
31 consenting or refusing to consent to electronic monitoring.

32 c. Prevent the placement or use of an electronic monitoring
33 device by a resident who has provided the nursing facility
34 with the notification and consent form as required under this
35 subchapter.

1 monitoring; the admissibility of evidence created through
2 electronic monitoring; liability and penalties for violations
3 of the bill; resident protections; and reporting requirements.
4 The bill also directs the department of inspections and appeals
5 to prescribe the notification and consent form described in
6 the bill and to make the form available on the department's
7 internet site.